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FILED/ACCEPTED

MAR 16 2012

Federal Communications Commission
Office of the Secretary

March 16, 2012

via hand delivery

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Attn: CGB Room 3-B431

**Re: Curtis Baptist Church's Request for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0001
CG Docket No. 06-181**

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, Telecommunications of the Deaf and Hard of Hearing Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Curtis Baptist Church ("Curtis") to exempt its programming from the Commission's closed captioning rules, 47 C.F.R. § 79.1 (2010).¹ Curtis has provided insufficient information to demonstrate that it cannot afford to caption its programming.

¹ Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, Curtis Baptist Church, Case No. CGB-CC-0001, CG Docket No. 06-181 (Feb. 15, 2012),

http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0215/DA-12-218A1.pdf; Petition for Exemption from Closed Captioning Requirement for Curtis Baptist

Curtis's requested exemption would deny equal access to its program for the members of its community who are deaf or hard of hearing. Maximizing accessibility through the comprehensive use of closed captions is a critical step in ensuring that all viewers who are deaf or hard of hearing can experience the important benefits offered by video programming on equal terms to their hearing peers. As Curtis acknowledges through its operation of a ministry for attendees who are deaf or hard of hearing impaired, "the local deaf community" is an important segment of its congregation.² While Consumer Groups acknowledge Curtis's efforts to reach the deaf and hard of hearing members of its community by interpreting its church services, Curtis has nevertheless failed to demonstrate that it cannot in fact afford to caption its programming.

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific evidence that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

Curtis has provided insufficient information to demonstrate, or for the Commission to determine, that Curtis cannot afford to caption its programming. Curtis does not present complete financial information, but its previous financial statements indicate that it can in fact afford captioning. Consumer Groups recommend that Curtis be given 45 days either to comply with the closed captioning rules or to re-apply with

Church, Case No. CGB-CC-0001, CG Docket No. 06-181 (Jan. 12, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021755421> [hereinafter *Curtis Petition*].

² *Curtis Petition*, *supra* note 1, at 2.

sufficient information to allow the Commission and the public to accurately determine whether Curtis request meets the legal standard for granting an exemption.

Under section 713(d)(3) of the Communications Act of 1934 ("1934 Act"),³ as added by the Telecommunications Act of 1996 ("1996 Act")⁴ and amended by section 202(c) of the Twenty-First Century Communications and Video Accessibility Act ("CVAA"),⁵ "a provider of video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934 Act], and the Commission may grant such petition upon a showing that the requirements . . . would be economically burdensome." In its October 20, 2011 Interim Standard Order, the Commission directed the Consumer and Governmental Affairs Bureau to evaluate all exemption petitions filed subsequent to October 8, 2010 using the "undue burden" standard in section 713(e) of the 1934 Act, pursuant to the Commission's existing rules in 47 C.F.R. § 79.1(f)(2)-(3).⁶

³ Pub. L. No. 416, ch. 652, 48 Stat. 1064 (1934) (codified as amended at 27 U.S.C. 613(d)(3)).

⁴ Pub. L. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.).

⁵ Pub. L. 111-260, 124 Stat. 2751 (2010) (to be codified in scattered sections of 47 U.S.C.).

⁶ *Order, Interpretation of Economically Burdensome Standard*, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,961, ¶ 37 (Oct. 20, 2011), http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1123/FCC-11-159A1.pdf. The Commission proposed to finalize this interim directive in a Notice of Proposed Rulemaking released with the 2011 ISO. *Interpretation of Economically Burdensome Standard*, CG Docket No. 11-175, 26 FCC Rcd. 14,941, 14,961-62, ¶¶ 38-39 (proposed Oct. 20, 2011), 76 Fed. Reg. 67,397 (Nov. 1, 2011), http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1123/FCC-11-159A1.pdf. See also 2011 ISO at 14,960, ¶ 36. In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. E.g., *Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). See *Anglers for Christ*

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁷ More specifically, a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁸ If a petitioner sufficiently demonstrates such an inability, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning its programming.⁹ Where a petition fails to make either of the foregoing showings, it fails to demonstrate that providing captions would pose an undue burden, and the Commission must dismiss the petition.¹⁰

I. Curtis's Ability to Afford Captioning

To sufficiently demonstrate that a petitioner cannot afford to caption its programming, a petition must provide both detailed information regarding the petitioner's financial status and verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers.¹¹ Both showings are essential to enable the Commission and the public to verify that the petitioner in fact cannot afford to caption its programming and eliminate the possibilities that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning services.

A successful petition requires, at a bare minimum, detailed information regarding the petitioner's finances and assets, gross or net proceeds, and other documentation

Ministries, Case Nos. CGB-CC-0005 and CGB-CC-0007, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,955-56, ¶ 28 (Oct. 20, 2011) [hereinafter *Anglers 2011*].

⁷ See *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.*

“from which its financial condition can be assessed.”¹² Curtis, however, provides only redacted financial statements for 2011, showing an income of over \$1.5 million and expenditures of over \$1.6 million.¹³ Curtis does not supply information about its other financial assets that allow it to operate at a loss, which also could be leveraged to pay for captioning. Curtis includes its approved budget for 2012, but again provides no information about its available assets.¹⁴ Accordingly, it is impossible to determine whether Curtis can afford to caption its programming.

Moreover, Curtis’s quoted cost for captioning—a minimum of \$334 per hour, or about \$17,000 annually—represents only about 1% of Curtis’s 2012 budget.¹⁵ In 2011, Curtis was able to continue operating even though it took \$86,276.66 less than it had budgeted for—a 5% variance.¹⁶ Curtis demonstrates that it able to respond to large, unexpected changes in its budget far in excess of its quoted cost of captioning. Curtis does not provide evidence that it cannot allocate a nominal percentage of its overall budget for captioning.

Finally, Curtis notes that closed captioning its programming would increase the weekly cost of the programming by 45-64%.¹⁷ When evaluating the financial status of a petitioner, however, the Commission “take[s] into account the overall financial resources of the provider or program owner,” not “only the resources available for a specific program.”¹⁸

¹² E.g., *Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005), cited with approval in *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

¹³ *Curtis Petition*, *supra* note 1, Exhibits.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 1.

¹⁸ *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,950, ¶ 17.

II. Alternative Avenues for Captioning Assistance

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.¹⁹ In particular, a petitioner must show that it has sought out sponsorships or other sources of revenue to cover the cost of captioning its program and is unable to obtain alternative means of funding captions for its programming.²⁰ Curtis, however, merely states that it has “made tentative contacts about securing donations from businesses to cover the cost of captioning” but has not received “any positive commitments.”²¹ Curtis provides no evidence, such as copies of correspondence or other records, that demonstrates an effort to seek funding from its programming distributor or other sources of sponsorship.

III. Conclusion

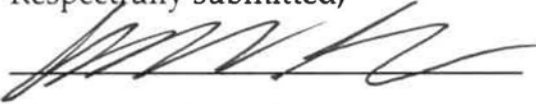
Curtis’s petition does not include sufficient information to conclude that Curtis cannot afford to caption its programming at this time or that it has exhausted all available alternative options for providing captioning. Because the petition fails to conclusively demonstrate that it would be unduly burdensome for Curtis to caption its programming under the high standard demanded under the 1996 Act and the CVAA, we respectfully urge the Commission give Curtis 45 days either to comply with the closed captioning rules or to re-apply with sufficient information, including its most recent and complete financial statements, to allow the Commission and the public to determine whether Curtis’s petition meets the legal standard for granting an exemption.

¹⁹ See *id.* at 14,955-56, ¶ 28 (internal citations omitted).

²⁰ See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7 (2001), cited with approval in *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

²¹ *Curtis Petition*, *supra* note 1, at 2.

Respectfully submitted,



Blake E. Reid, Esq.[†]

March 16, 2012

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National Association of the Deaf (NAD)

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Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

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[†] Counsel thanks Georgetown Law student clinicians Allyn Ginns and Cathie Tong for their assistance in preparing these comments.

Hearing Loss Association of America (HLAA)

_____/s/_____

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Association of Late-Deafened Adults (ALDA)

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8038 Macintosh Lane, Rockford, IL 61107

Cerebral Palsy and Deaf Organization (CPADO)

_____/s/_____

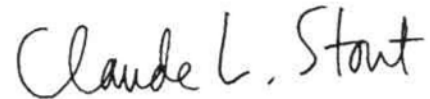
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CERTIFICATION

Pursuant to 47 C.F.R. § 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied in the foregoing Opposition, these facts and considerations are true and correct to the best of my knowledge.

A handwritten signature in cursive script that reads "Claude L. Stout".

Claude Stout
March 16, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 16, 2012, pursuant to the Commission's aforementioned Public Request for Comment, a copy of the foregoing Opposition was served by first class U.S. mail, postage prepaid, upon the petitioner:

Curtis Baptist Church
1326 Broad St.
Augusta, GA 30901

A handwritten signature in black ink, appearing to read "Niko Perazich", is written over a horizontal line.

Niko Perazich
March 16, 2012